

Pirelli Cable Corporation and International Brotherhood of Electrical Workers, Local Union 2236, AFL-CIO, CLC and H. Dean Simpson. Cases 11-CA-15987, 11-CA-16121, 11-CA-16149, 11-CA-16300, 11-CA-16365, 11-CA-16475, 11-CA-16536, 11-CA-16670, 11-CA-16708, 11-CA-16727, 11-CA-16754, 11-CA-16844, and 11-CA-16160

August 31, 2000

SUPPLEMENTAL DECISION AND ORDER
BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND LIEBMAN

On June 18, 1997, the National Labor Relations Board issued its Decision and Order in this proceeding.¹ The Board found, in agreement with the judge, *inter alia*, that the Respondent violated the National Labor Relations Act by threatening its employees with loss of their jobs if they went on strike, that the threat was a contributing cause of the employees' May 5, 1994 strike, and that the Respondent violated the Act by failing to reinstate the unfair labor practice strikers upon their unconditional offer to return to work. In light of these findings, the Board found it unnecessary to consider the judge's "alternative unfair labor practice findings that are based on the assumption that the strike was an economic strike."²

On March 31, 1998, the United States Court of Appeals for the Fourth Circuit issued its decision in this case, enforcing in part and remanding in part the Board's Order.³ The court rejected the Board's finding that the Respondent threatened its employees with job loss, and, therefore, did not agree that the strike was an unfair labor practice strike. The court remanded the case to the Board "for reconsideration of the administrative law judge's numerous alternative holdings based upon the initial conclusion that the strike was an economic strike."⁴

On November 30, 1998, the Board informed the parties that it had accepted the court's remand and invited the parties to file statements of position on the issues raised by the remand. The General Counsel, the Respondent, and the Charging Party Union filed statements of position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We have reviewed the entire record, including the parties' statements of position, in light of the court's remand, which the Board accepts as the law of the case. As explained below, we have decided to affirm the

judge's findings in part, reverse in part, and remand two issues for further hearing.

A. Background

The Respondent has recognized and bargained with the Union as the representative of its production and maintenance employees since 1967. In March 1994,⁵ the parties began negotiations for a new contract. On April 20, the Respondent sent a letter to its employees informing them that they could lose their jobs if they went on strike.⁶ On May 5, the employees commenced a strike. The Respondent continued its plant operations by hiring replacement workers, and by utilizing nonunit employees and strikers who crossed the picket line to return to work.

At the time of the strike, employee James McCord was on disability leave and was receiving workers' compensation benefits as the result of a job-related injury. The Respondent classified McCord as a striker and canceled his workers' compensation benefits.⁷

The strike ended on June 20, when the Union made an unconditional offer to return to work on behalf of all striking employees. The Respondent informed the Union that all jobs were filled at that time and that the strikers would not be returned to work immediately, but would be placed on a preferential hiring list. The parties signed a strike settlement agreement providing that strikers would be placed on a preferential hiring list in order of their seniority and returned to work "[a]s openings occur."

On June 21 the Respondent sent former strikers a letter requesting that they advise the Respondent of their desire and availability for reinstatement as a condition precedent to their placement on the preferential hiring list. The Respondent's letter also stated, "If we have not received your response by [June 29], we will assume that you have no interest in reemployment and do not wish to be included on the preferential hiring list."

Despite the strike settlement agreement, the Respondent filled jobs which arose after the strike ended by posting them for bidding by replacement workers and other employees working in the plant before it offered the jobs to strikers on the preferential hiring list. The Respondent also terminated strikers because, it claims, they had obtained other jobs.

Shortly after the strike ended, Plant Manager Kelley, speaking to replacement workers, stated that workers at a nearby plant had unionized and that the owner closed the plant and "kept it tied up in court so long that he eventually had to pay some of the grand-kids because the peo-

¹ 323 NLRB 1009. The Board's decision consolidated Cases 11-CA-15987, et al. (*Pirelli I*) with Cases 11-CA-16670, et al. (*Pirelli II*).

² *Id.*

³ 141 F.3d 503 (1998).

⁴ *Id.* at 519. The court also found, contrary to the Board, that the Respondent had not violated Sec. 8(a)(5) by withdrawing recognition from the Union or by implementing changes in terms and conditions of employment.

⁵ All subsequent dates are in 1994 unless otherwise indicated.

⁶ The court reversed the Board's finding that this letter constituted an unlawful threat.

⁷ After the strike ended, the Respondent refused to return McCord to work, even though he had secured a doctor's release. The court affirmed the Board's finding that the Respondent violated Sec. 8(a)(3) by removing McCord from his disability status, by canceling his benefits, and by discharging him.

ple had died.” Kelley assured the replacement workers that the Respondent would do the same thing.⁸

In September, employee Thompson-Hanlon told Kelley that she had seen job openings, which the Respondent should have offered to two union officials. Kelley told her that the Respondent would not recall those particular employees.⁹ In an October 21 memorandum to all plant management, Acting Human Relations Manager Driggers discussed the matter of filling vacancies from the preferential hire list. The memorandum stated:

As you all know we are currently involved in litigation with I.B.E.W. on the issue of recognizing the Union. Our defense in this case will include an analysis of those on the preferential hiring list and the part they would play in a decertification vote.

This same type of analysis is being done when vacancies occur, and we have to make a decision on who to recall from the list. We will not always understand the choices we will have to make but rest assured we are acting on the best legal advice available.

B. Analysis

As noted, we previously found it unnecessary to pass on the judge’s alternative findings, which were based on the complaint allegations that the May 5 strike was an economic strike. In light of the court’s remand, however, we must now pass on those findings.

1. The *Pirelli I* complaint alleges, and the judge found, that the Respondent’s June 21 letter to the former strikers violated the Act. As stated above, that letter required employees, as a condition precedent to their placement on the preferential hiring list, to state whether they wished to be placed on the preferential hiring list or whether they had found other employment. This letter was sent just 1 day after the Respondent signed an agreement with the Union providing that the former strikers would be placed on a preferential hiring list.

It is well established that an employer’s procedure “designed to extinguish the preferential hiring rights of strikers,” is “inherently destructive of employee rights” and unlawful, unless the employer can prove “legitimate and substantial business justifications” for its actions. *Giddings & Lewis, Inc. v. NLRB*, 710 F.2d 1280, 1285 (7th Cir. 1983). Here, we find that the Respondent has failed to demonstrate that it had legitimate and substantial business justifications for requiring the requested information from the reinstated strikers as a condition for making reinstatement offers to them.¹⁰ Therefore, in

agreement with the judge, we conclude that the Respondent violated Section 8(a)(1) of the Act by conditioning the reinstatement of economic strikers on their submission of a letter advising the Respondent of their desire and availability for reinstatement. *Alaska Pulp Corp.*, 300 NLRB 232 (1990), *enfd.* 944 F.2d 909 (9th Cir. 1991).

2. The *Pirelli I* complaint alleges, and the judge found, that the Respondent violated the Act by filling job vacancies through an internal bid procedure rather than by recalling unreinstated economic strikers, thereby denying them their *Laidlaw*¹¹ rights.

The strike ended on June 20. The parties’ strike settlement agreement provided as follows:

All employees who have remained on strike through Noon today, June 20, 1994, shall be placed, in the order of their seniority, on a preferential hiring list, behind the eight (8) employees who have already been placed on that list. As openings occur employees shall be returned in the order of their placement on that list and in accordance with their qualifications to perform the work available.

The record shows that between June 20, 1994, and April 10, 1995, the Respondent posted approximately 68 jobs on the plant bulletin board for bid by employees working inside the plant. There were approximately 155 strikers on the preferential hiring list, 85 of whom performed the posted jobs before the strike. In general, the Respondent did not offer the posted jobs to the strikers on the preferential hiring list. The Respondent did not even permit the unreinstated strikers to bid on the posted jobs.

In defense of its conduct, the Respondent presents what it terms a “waiver argument” based on the strike settlement agreement. Specifically, the Respondent contends that “the parties agreed that the economic strikers would be returned to work before new employees were hired,” but that “internal vacancies would be filled from among existing employees.” Thus, the Respondent asserts, the Union “relinquish[ed] *Laidlaw* bidding rights.”

In *California Distribution Centers*, 308 NLRB 64, 64 (1992) (citing *Laidlaw*), we noted:

It has long been held under Board law that economic strikers who unconditionally apply for reinstatement when their positions are filled by permanent replacements are entitled to full reinstatement on the departure of the replacements or when substantially equivalent jobs for which they are qualified become available, unless the employer can sustain its burden of proof that the failure to offer them

⁸ The court affirmed the Board’s finding that Kelley’s threat to “drag this case out” violated Sec. 8(a)(1).

⁹ The court affirmed the Board’s finding that Kelley’s statement that union officials would not be recalled because of their participation in the strike violated Sec. 8(a)(1).

¹⁰ In fact, the Respondent’s briefs to the Board make no claim of business justification. In its statement of position, the Respondent simply states that the judge’s summary conclusion regarding the June

21 letter must be rejected. The Respondent’s exceptions brief makes no argument about this issue.

¹¹ *Laidlaw Corp.*, 171 NLRB 1366 (1968), *enfd.* 414 F.2d 99 (7th Cir. 1969), *cert. denied* 397 U.S. 920 (1970).

reinstatement was for legitimate and substantial business reasons.

In *MCC Pacific Valves*, 244 NLRB 931 (1979), supplemental decision 253 NLRB 414 (1980), enfd. in part mem. 665 F.2d 1053 (9th Cir. 1981), as here, the facts showed that at the conclusion of an economic strike, the respondent posted jobs for bidding by employees then on the payroll. At the time these jobs were posted, there remained a number of strikers who had not yet been reinstated. However, some posted jobs were not offered to unreinstated strikers at all, and others were offered to them only if there were no successful bidders on those jobs from within the plant. Reversing the administrative law judge, the Board held that when job vacancies occur because of the departure of strike replacements and the employer posts those jobs for bidding, the employer is “not entitled to prefer strike replacements then on the payroll to qualified strikers awaiting reinstatement.” 244 NLRB at 933 (emphasis in original).

It is well established that waiver of rights under the Act must be “clear and unmistakable.” *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). Here, this standard clearly was not met. There is nothing in the strike settlement agreement itself or the testimony in the record establishing that the Union “clearly and unmistakably” waived the employees’ rights under *Laidlaw* and *MCC Pacific Valves*. Thus, we find no merit in the Respondent’s waiver argument.

The Respondent also argues that the record does not show how many of the 68 job postings constituted *Laidlaw* “vacancies” to which a striker must be recalled. The Respondent states that “[w]hile a few of the bid announcements indicated that someone was being replaced, most of the postings and announcements simply indicated the posting of a job without indicating whether a replacement was leaving.” Given the present state of the record, the Respondent asserts that the complaint allegations regarding the bidding system should be dismissed or, “[a]t the very least,” remanded to the judge to reopen the record and take further evidence. The General Counsel, on the other hand, “submits that Respondent violated Section 8(a)(3) of the Act each and every time it posted a job for bid without recalling an unreinstated striker to fill said job.”

Under *Laidlaw*, an economic striker’s entitlement to reinstatement is contingent upon the existence of a job vacancy. *Bancroft Cap Co.*, 245 NLRB 547 fn. 1 (1979). “A genuine job vacancy, commonly known as a ‘*Laidlaw* vacancy,’ may arise when, for example, the company expands its workforce or discharges a particular employee, or when an employee quits or otherwise leaves the company.” *NLRB v. Delta-Macon Brick & Tile Co.*, 943 F.2d 567, 572 (5th Cir. 1991) (emphasis added). A *Laidlaw* vacancy is not created, however, when an employer temporarily transfers an employee from one de-

partment to another or merely “reshuffles” its workforce. *Textron, Inc.*, 257 NLRB 1, 4 (1981), enfd. in relevant part 687 F.2d 1240, 1243–1244 (8th Cir. 1982). It is the General Counsel’s burden to establish the existence of a *Laidlaw* vacancy. *Aqua-Chem, Inc.*, 288 NLRB 1108, 1110 fn. 6 (1988), enfd. 910 F.2d 1487 (7th Cir. 1990), petition for rehearing denied 922 F.2d 403 (7th Cir. 1991).

Having carefully considered the entire record, including the judge’s decision, we find, as the Respondent concedes, that at least some of the 68 job postings represented vacancies created by the departure of strike replacements. In filling these vacancies, the Respondent “was not entitled to prefer strike replacements then on the payroll to qualified strikers awaiting reinstatement.” *MCC Pacific Valves*, supra, 244 NLRB at 933 (emphasis in original). Rather, the “Respondent was obligated to offer the initial job vacancies created by the departure of strike replacements to unreinstated, qualified strikers.” Id. at 934 (emphasis in original). Accord: *Textron, Inc. v. NLRB*, 687 F.2d 1240, 1246–1247 (8th Cir. 1982) (citing *MCC Pacific Valves* with approval and holding that vacancies “must not be preferentially offered to currently-working personnel”). The Respondent has failed to establish legitimate and substantial business justifications for its conduct. Therefore, in accordance with *MCC Pacific Valves*, we find that the Respondent violated Section 8(a)(3) and (1) of the Act by filling job vacancies through an internal bid procedure rather than by recalling unreinstated economic strikers.

The Respondent is correct, however, that the record does not show the extent of this violation, i.e., exactly how many of the 68 job postings represented vacancies within the meaning of *Laidlaw*.¹² Therefore, in agreement with the Respondent’s alternative position, we shall remand this complaint allegation to the judge for further hearing.¹³

3. The *Pirelli I* complaint alleges, and the judge found, that the Respondent violated the Act by failing to recall

¹² Every job posting does not necessarily represent a *Laidlaw* vacancy. For example, let us suppose that a strike replacement resigned his position, and the job was one that an unreinstated striker was entitled to under *Laidlaw*. Instead of recalling the striker, the employer posted the job for bidding by employees on the payroll. Employees then bid in an upward fashion, that is, first on the posted job, then for the job vacated by the employee who obtained the posted job, and so on. See *MCC Pacific Valves*, supra, 244 NLRB at 931–932. In this example, there are multiple job postings but only the initial posting is a true *Laidlaw* vacancy, because if the employer had offered that position to the unreinstated striker, as it was required to do under *Laidlaw*, the other vacancies would not have occurred.

¹³ For the same reason, we shall also remand the related complaint allegation that the Respondent violated the Act by failing and refusing “to provide qualified unreinstated strikers an opportunity to bid on job vacancies.”

On remand, after receiving further evidence, the judge should determine which of the 68 job postings represented *Laidlaw* vacancies and identify the striker who would have been reinstated to that vacancy or permitted to bid on it.

Ricky Ferguson to a vacant CV operator job and failing to recall William Riley Jr. to a vacant die control job. Both were the most senior employees in their job positions on the preferential hiring list at the time the Respondent posted the jobs for bid. We find, in agreement with the judge, that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to recall Ferguson and Riley.

4. The *Pirelli I* complaint alleges that the Respondent violated the Act by removing Samuel Fleming and John Wilson from the preferential hire list. The judge found that on May 5 the Respondent discharged these employees after hearing rumors that Fleming had obtained another job and that Wilson had opened a gas station. Both employees had worked as electronic technicians for many years. At the time the Respondent discharged them, there were vacancies for electronic technicians. The Respondent did not contact either employee before discharging them.

The Board has held that, in order to cancel the recall rights of economic strikers, an employer must show that the striker attained *regular and substantially equivalent* employment and that the striker *unequivocally intended to abandon* his employment with the employer. *Marchese Metal Industries*, 313 NLRB 1022, 1028–1031 (1994) (emphasis added). The Respondent failed to rebut credited testimony from both employees that their “new” jobs were not substantially equivalent to their former jobs with the Respondent.¹⁴ The Respondent also failed to show that either employee intended to abandon his job with the Respondent.

We find, accordingly, in agreement with the judge, that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Fleming and Wilson.¹⁵

5. The *Pirelli II* complaint alleges, and the record shows, that the Respondent failed to place strikers Howard Gray and James Cannady on the preferential hiring list and failed to recall them. The Respondent claims that since neither employee returned its June 21 letter requiring employees to advise the Respondent of their desire to return to work it did not place their names on the preferential hiring list.¹⁶ We have found that the Re-

spondent violated the Act by requiring former strikers to return a letter indicating their desire to return to work for the Respondent. It follows that the Respondent could not penalize an employee for not returning the letter.

We find, therefore, that by failing to place Gray and Cannady on the preferential hire list the Respondent terminated their preferential recall rights in violation of Section 8(a)(3) and (1) of the Act.

6. The *Pirelli II* complaint alleges that the Respondent discharged and failed to recall 23 named strikers.¹⁷ The Respondent asserts that it removed these strikers from the preferential hiring list because they had obtained interim employment. As we stated previously, it is the Respondent’s burden to prove that a striker has obtained regular and substantially equivalent employment with another employer and intended to abandon employment with the former employer. *Marchese Metal Industries*, 313 NLRB at 1028–1031. See also *Alaska Pulp Corp.*, 326 NLRB 522 (1998).

The record shows that at the time the 23 strikers were discharged the Respondent did not know whether the strikers had obtained regular and substantially equivalent employment with another employer or whether the strikers intended to abandon employment with the Respondent. The Respondent’s human resources manager, Wilene Driggers, testified that her superiors instructed her to delete from the preferential hiring list strikers who had obtained any regular employment. Accordingly, she terminated each of the strikers because she learned that they had secured interim employment, admittedly without making inquiries into the nature of the interim employment. Driggers also admitted that she terminated the strikers without regard to whether they intended to abandon their employment with the Respondent. In fact, each of the terminated strikers notified the Respondent that they had not abandoned their desire to return to work for the Respondent. Driggers testified that she did not terminate a striker until a vacancy occurred which the striker was entitled to fill on the basis of his qualifications and seniority on the preferential hiring list.

The judge found that the Respondent terminated these employees’ reinstatement rights without regard to whether they had obtained substantially equivalent employment, that the Respondent engaged in this conduct in order to rid itself of the strikers, and that the Respondent failed to demonstrate any legitimate business justification for the terminations. We agree. We also find, based on Driggers’ own testimony, that when these employees were terminated vacancies existed to which they were entitled to be reinstated under *Laidlaw*. Thus, we conclude that the Respondent violated Section 8(a)(3) and

¹⁴ Fleming testified that the poststrike job he obtained is substantially different from his electronic technician job with the Respondent, i.e., he works the night shift instead of the day shift, works fewer overtime hours, has no pension plan, and pays more for health insurance. Wilson testified that he did not earn as much in his gas station business as he had with the Respondent.

¹⁵ Without significant discussion, the judge also found in *Pirelli I* that the Respondent violated Sec. 8(a)(3) by withdrawing job openings if they were not filled by replacement employees, by combining jobs, by using supervisors to perform bargaining unit work, and by eliminating 20 positions without business justification. We find that there is insufficient evidence in the record to support these 8(a)(3) findings and, therefore, we reverse them.

¹⁶ It appears that neither Cannady or Gray received the June 21 letter. This is, however, irrelevant to our disposition of this complaint allegation.

¹⁷ The names of 22 of these strikers are listed in Conclusion of Law 8. With respect to the 23rd employee, Charles Tinch, see fn. 18, below.

(1) by discriminatorily terminating and failing to recall these employees from the preferential hiring list.¹⁸

7. The *Pirelli II* complaint alleges that the Respondent employed temporary employees to avoid recalling unreinstated economic strikers.

Shortly after the Respondent removed former striker Walter Anderson from the preferential hiring list on the ground that he had obtained another job, the Respondent told him that he would be rehired if he went to a temporary staffing service. Anderson complied with the Respondent's request and the Respondent rehired him as a temporary employee. Two days later, the Respondent rehired him as a new employee, without his previous seniority. The Respondent also rehired Larry Gray¹⁹ and Andy Bannister²⁰ as new employees without seniority through the temporary employment agency. The Respondent failed to establish legitimate and substantial business justifications for its conduct.

We agree with the General Counsel and the judge that the Respondent's use of the temporary staffing service to obtain the services of Anderson, Gray, and Bannister as new employees was a subterfuge designed to avoid recalling them in accordance with their reinstatement rights under *Laidlaw*. Accordingly, we find that the Respondent, by employing Anderson, Gray, and Bannister through a temporary employment agency as new employees instead of recalling them from the preferential hiring list, violated Section 8(a)(3) and (1) of the Act.²¹

CONCLUSIONS OF LAW

1. The Respondent, Pirelli Cable Corporation, is an employer within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local Union 2236, AFL-CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

¹⁸ Charles Tinch is not included in our remedy for this violation because the court reversed the Board's finding that he was unlawfully discharged.

¹⁹ Gray had also been removed from the preferential hiring list on the grounds that he had obtained another job.

²⁰ Bannister remained on the preferential hiring list.

²¹ The judge also found that the Respondent violated Sec. 8(a)(3) and (1) by discriminating against "all other employees whom it failed to recall by . . . its use of a temporary employment agency" to fill positions that it should have offered to the unreinstated economic strikers. 323 NLRB at 1027. We agree with the judge and shall extend remedial relief to employees similarly situated to Anderson, Gray, and Bannister. Thus, it is well established that "both named and unnamed discriminatees are entitled to a reinstatement and make-whole remedy in a situation, as here, where the General Counsel has alleged and proven discrimination against a defined and easily identifiable class of employees." *Morton Metal Works*, 310 NLRB 195 (1993), enf'd. 9 F.3d 108 (6th Cir. 1993); accord: *Grand Rapids Press*, 325 NLRB 915 (1998), enf'd. mem. 208 F.3d 214 (6th Cir. 2000). In this case, the defined and easily identifiable class consists of unreinstated economic strikers who the Respondent employed through a temporary employment agency as new employees instead of recalling them from the preferential hiring list. The identity of these individuals shall be ascertained at the compliance stage. *Morton Metal*, supra, and *Grand Rapids*, supra.

3. The Respondent violated Section 8(a)(1) of the Act by conditioning the reinstatement of economic strikers on their submission of a letter advising the Respondent of their desire and availability for reinstatement.

4. The Respondent violated Section 8(a)(3) and (1) of the Act by filling job vacancies through an internal bid procedure rather than by recalling unreinstated economic strikers.

5. The Respondent violated Section 8(a)(3) and (1) of the Act by failing to reinstate Ricky Ferguson and William Riley Jr.

6. The Respondent violated Section 8(a)(3) and (1) of the Act by discharging John Wilson and Samuel Fleming.

7. The Respondent violated Section 8(a)(3) and (1) of the Act by terminating the preferential recall rights of Howard Gray and James Cannady.

8. The Respondent violated Section 8(a)(3) and (1) of the Act by discharging and failing to recall Franklin Page, Mark Anderson, Samuel Brownlee, Larry Gray, Winston D. Sparks, Stanley Chiles, Robert Prince, Timothy D. Sparks, Kevin Sellers, Rhett Simpson, Wesley Gibson, Kim Ashley, Lonnie Thompson, Melvin Ashley, James Oliver Jr., James O. Coleman, Eugene V. Gray, Bobby Lee Paul, Dexter R. Harris, R. Bernard Freeman, Robert F. Donaldson, and Johnny Slay.

9. The Respondent violated Section 8(a)(3) and (1) of the Act by employing Walter Anderson, Larry Gray, and Andy Bannister through a temporary employment agency as new employees instead of recalling them from the preferential hiring list.

10. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to offer all those employees listed below immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges. We shall further order the Respondent to make these employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's discrimination against them, less interim earnings during the period. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987):

Mark Anderson
Walter Anderson

Larry Gray
Dexter R. Harris

Kim Ashley	James Oliver Jr.	Melvin Ashley	Franklin Page
Melvin Ashley	Franklin Page	Andy Bannister	Bobby Lee Paul
Andy Bannister	Bobby Lee Paul	Samuel Brownlee	Robert Prince
Samuel Brownlee	Robert Prince	James Cannady	William Riley Jr.
James Cannady	William Riley Jr.	Stanley Chiles	Kevin Sellers
Stanley Chiles	Kevin Sellers	James O. Coleman	Rhett Simpson
James O. Coleman	Rhett Simpson	Robert F. Donaldson	Johnny Slay
Robert F. Donaldson	Johnny Slay	Ricky Ferguson	Timothy D. Sparks
Ricky Ferguson	Timothy D. Sparks	Samuel Fleming	Winston D. Sparks
Samuel Fleming	Winston D. Sparks	R. Bernard Freeman	Lonnie Thompson
R. Bernard Freeman	Lonnie Thompson	Wesley Gibson	John Wilson
Wesley Gibson	John Wilson	Eugene V. Gray	Howard Gray
Eugene V. Gray	Howard Gray		

We shall also order the Respondent to remove from its files any references to its unlawful actions against the employees listed above and to notify them, in writing, that it has done so.

ORDER

The National Labor Relations Board orders that the Respondent, Pirelli Cable Corporation, Abbeville, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Conditioning the reinstatement of economic strikers on their submission of a letter advising the Respondent of their desire and availability for reinstatement, and terminating the preferential recall rights of employees who failed to submit that letter.

(b) Filling job vacancies through an internal bid procedure rather than by recalling unreinstated economic strikers.

(c) Failing to recall unreinstated economic strikers to their former or substantially equivalent positions when vacancies exist in those positions.

(d) Discharging unreinstated economic strikers or terminating their preferential recall rights without regard to whether they had obtained substantially equivalent employment.

(e) Employing unreinstated economic strikers through a temporary employment agency as new employees instead of recalling them from the preferential hiring list.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer the following employees listed below full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges:

Mark Anderson	Larry Gray
Walter Anderson	Dexter R. Harris
Kim Ashley	James Oliver Jr.

(b) Make the employees listed above whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Offer those unreinstated economic strikers who the Respondent employed through a temporary employment agency instead of recalling them from the preferential hiring list immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful actions against the following employees listed below and within 3 days thereafter, notify each of them in writing that this has been done and that these actions will not be used against them in any way:

Mark Anderson	Larry Gray
Walter Anderson	Dexter R. Harris
Kim Ashley	James Oliver Jr.
Melvin Ashley	Franklin Page
Andy Bannister	Bobby Lee Paul
Samuel Brownlee	Robert Prince
James Cannady	William Riley Jr.
Stanley Chiles	Kevin Sellers
James O. Coleman	Rhett Simpson
Robert F. Donaldson	Johnny Slay
Ricky Ferguson	Timothy D. Sparks
Samuel Fleming	Winston D. Sparks
R. Bernard Freeman	Lonnie Thompson
Wesley Gibson	John Wilson
Eugene V. Gray	Howard Gray

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Abbeville, South Carolina facilities, copies of the attached notice marked "Appendix."²² Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 28, 1994.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the record in this proceeding be reopened and that the allegations of paragraphs 19(c) and (d) of the *Pirelli I* complaint that the Respondent "filled job vacancies through an internal bid procedure rather than by recalling unreinstated economic strikers" and that the Respondent "failed and refused to provide qualified unreinstated economic strikers an opportunity to bid on job vacancies" be remanded to Judge Cullen for further appropriate action in accordance with this Supplemental Decision and Order. The judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and a recommended Order in light of the Board's remand. Following service of the supplemental decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT condition the reinstatement of economic strikers on their submission of a letter advising us

of their desire and availability for reinstatement and WE WILL NOT terminate the preferential recall rights of employees who failed to submit that letter.

WE WILL NOT fill job vacancies through an internal bid procedure rather than by recalling unreinstated economic strikers.

WE WILL NOT fail or refuse to recall unreinstated economic strikers to their former or substantially equivalent positions when vacancies exist in those positions.

WE WILL NOT discharge unreinstated economic strikers or terminate their preferential recall rights without regard to whether they had obtained substantially equivalent employment.

WE WILL NOT employ unreinstated economic strikers through a temporary employment agency as new employees instead of recalling them from the preferential hiring list.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer the following employees listed below full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges:

Mark Anderson	Larry Gray
Walter Anderson	Dexter R. Harris
Kim Ashley	James Oliver, Jr.
Melvin Ashley	Franklin Page
Andy Bannister	Bobby Lee Paul
Samuel Brownlee	Robert Prince
James Cannady	William Riley Jr.
Stanley Chiles	Kevin Sellers
James O. Coleman	Rhett Simpson
Robert F. Donaldson	Johnny Slay
Ricky Ferguson	Timothy D. Sparks
Samuel Fleming	Winston D. Sparks
R. Bernard Freeman	Lonnie Thompson
Wesley Gibson	John Wilson
Eugene V. Gray	Howard Gray

WE WILL make the employees listed above whole for any loss of earnings and other benefits they may have suffered as a result of our discrimination against them, in the manner set forth in the remedy section of the Board's decision.

WE WILL offer those unreinstated economic strikers who we employed through a temporary employment agency instead of recalling them from the preferential hiring list immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimina-

²² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tion against them, in the manner set forth in the remedy section of the Board's decision.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful actions taken against the following employees listed below and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that these actions will not be used against them in any way:

Mark Anderson	Larry Gray
Walter Anderson	Dexter R. Harris
Kim Ashley	James Oliver Jr.
Melvin Ashley	Franklin Page

Andy Bannister	Bobby Lee Paul
Samuel Brownlee	Robert Prince
James Cannady	William Riley Jr.
Stanley Chiles	Kevin Sellers
James O. Coleman	Rhett Simpson
Robert F. Donaldson	Johnny Slay
Ricky Ferguson	Timothy D. Sparks
Samuel Fleming	Winston D. Sparks
R. Bernard Freeman	Lonnie Thompson
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PIRELLI CABLE CORPORATION